

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKĀURAU**

**CRI-2018-004-009399  
[2020] NZDC 131**

**NEW ZEALAND POLICE**  
Prosecutor

v

**[JORDAN SACKS]**  
Defendant

Hearing: 7 January 2020

Appearances: Sergeant S Dillons for the Prosecutor  
K Lamb for the Defendant

Judgment: 7 January 2020

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**ORAL JUDGMENT OF JUDGE D J SHARP**

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[1] [Jordan Sacks] is charged with operating a vehicle on a road carelessly causing injury to the complainant. There is no dispute about the following factors: Mr [Sacks] was the driver of the black Toyota Celica, a motor vehicle involved in a collision with the complainant's scooter on 30 September 2018.

[2] The general issues in respect of this case are whether the prosecution has proved beyond reasonable doubt that Mr [Sacks] was careless and whether the complainant suffered injury as a consequence. The requisite legal provisions are found in the Land Transport Act 1988 ss 8 and 38.

[3] Carelessness is assessed on an objective standard which means it does not relate to the particular person who is involved. It is impersonal and it is a universal standard. It is fixed in relation to the need for safety for other road user and governed by the needs of the public in regard to the use of vehicles on roads. It is the standard of the reasonably prudent driver, that is found in *Police v Chapple* [1974] 1 NZLR 225.

[4] In some cases errors of judgement will amount to carelessness but in some others they may not. The specific issue in this case is whether the decision on the part of the defendant to enter into a turning manoeuvre was an error of judgement which fell below the standard of a reasonably prudent driver.

[5] The prosecution case relies upon four witnesses. [The complainant] gave evidence that she was riding her scooter along Great South Road, she saw three cars coming towards her on the opposite side of the road. She heard the engine of the car and she saw the wheels indicating that a turn across her path was likely to take place. She said she knew the car wanted to turn, she said she was travelling under 50 kilometres per hour. She realised that the vehicle was turning and she tried an emergency brake. She said she applied the emergency braking manoeuvre eight metres from the vehicle that was crossing her path. She said she tried to keep balance but crashed into the car. She has no memory of the impact. She recalls lying on the roadway and a man talking to her. She heard an ambulance coming, she was taken to hospital and learned later that she had two broken bones. The medical report refers to a fracture of the radius of the left wrist and of the scaphoid bone of the right hand.

[6] In cross-examination she was asked about her driver's licence, she was originally from France and had a licence which had been transferred from French Polynesia. She was asked about the jacket that she was wearing, this was an issue because in [Constable A]'s recorded evidence and evidence in Court he spoke of a jumper that she was wearing at the time of the crash. She was asked about potential steps she might have taken to avoid the turning vehicle, she said that she did not wish to hit the curb for fear of going underneath the vehicle or to turn into the lane on the right of the vehicle for concern other vehicles may have been present. She said she tried to brake and to keep balance.

[7] She denied going faster than 50 kilometres per hour, she was challenged about her estimate of distance with regards to the turning vehicle and her emergency brake. She maintained that although she might have seen the turning manoeuvre starting before she was able to brake, that her estimates were in order.

[8] The scooter that she had had an "L" plate on it, she said that had remained on the vehicle despite her having a full licence. She agreed that there were no photographs of skid marks shown in relation to the photographs presented by prosecution.

[9] [Witness 1] gave evidence of following two other cars, he was travelling along Great South Road. He said the night in which the collision occurred was clear. He said Great South Road has four lanes, two on each side and a median strip. He said at Green Park Road a black Toyota Celica in front of him came up to the intersection, it made a right turn, this was in front of a motor scooter. He called the scooter a moped but he said that it had hit the car. He said prior to the crash that motor scooter was driving with its headlight on and was driving normally. He said that the motor scooter was not speeding. He said that this was the only vehicle that was travelling in the direction from which the motor scooter came.

[10] He said he had a clear view of what happened. He said the black Celica made the turn not too fast, he said the turn was not made dangerously. The other vehicle, travelling in the same direction, a white Mitsubishi vehicle, was present but not in his view. He said the situation was a close call and the scooter might have avoided the turning vehicle if it had slowed down more. In the photographs produced he said that the scooter had been in the left lane approaching the T intersection. After the crash he helped the scooter rider. He said he and his passenger had lifted the scooter off her.

[11] In cross-examination he said he did not see the defendant or his girlfriend helping the complainant. He said that the complainant was wearing a black leather jacket and had gloves on, this was consistent with what the complainant had said about the clothing that she was wearing. He repeated under cross-examination the scooter was not travelling fast, he was not challenged about his view in respect of speeds of the vehicle, or as to whether he was able to see what he said he could see.

[12] [Constable B] gave evidence of arriving at the scene, he spoke with the defendant, he gave evidence, without objection, of his discussions. The defendant had said to him that he was turning into Green Park Road, he put the car into second gear but it did not engage and he could not accelerate, he went into the path of the oncoming scooter at approximately 20 kilometres per hour. In cross-examination this statement was confirmed, and he read it back to Mr [Sacks]. The Constable did not recall if there were skid marks there or not, he did confirm that the photographs did not show any skid marks. He referred to scrape marks that could be seen and he pointed to the area in which some debris can be seen in the photographs.

[13] The officer in the case, [Constable A] was called, he gave evidence of taking the photographs produced, his observations at the scene and of his taking the statements of the witnesses. He was cross-examined about the differences in the description of the clothing between himself, the complainant and [witness 1] and an absence of any job sheet regarding his review of the circumstances and his telephone discussions with [the complainant] on 10 October 2018. For reasons that will be apparent, although there might be some discrepancies and some criticisms might be made of these aspects of the investigation, I do not see them as material with regard to the issues in the case.

[14] The defendant elected to give and call evidence, if his evidence took me to the point where it provided a defence then I would of course dismiss the charge. If the evidence took me to a point where I was uncertain about whether the elements were made out, then again because of the burden of proof in the trial, which is beyond reasonable doubt and remains on the prosecution throughout, I would also bound to dismiss the charge. If the evidence the defendant provided to me did not take me to the point where I was uncertain then I would not convict him on the basis of his testimony or the testimony of his witness. I would simply put that to one side and look at the prosecution case, because the prosecution have the burden of proof from the start of the trial to the end.

[15] Mr [Sacks] gave evidence about the circumstances of the evening. He said that he was driving the motor vehicle, that he had looked to see whether the way was clear, that he saw nothing, he saw no motor scooter in the lanes he was due to cross. He

made the decision that it was safe to cross the road, he attempted to put the vehicle in gear and that the vehicle did not engage in the way that he expected and remained in neutral, coasting across the lanes that he had chosen to enter into.

[16] He has produced in evidence details in relation to the work that he had done on his vehicle, he had a clutch job done on 28 December 2017 and he had had a further service on 2 February 2018. These mechanical repairs and works taken place some many months before this incident. He said that there was very little in the way of indications that there might be any problem with his vehicle and he said that his vehicle, on being considered, showed nothing that could be regarded as a mechanical defect could be identified. He said that he would not do anything reckless, he said that he did not ever wish to cut off a motor vehicle or knowingly take a risk as far as getting across the road be concerned and that is consistent with him wanting to pursue his career as a paramedic and his current employment as a lifeguard.

[17] The defendant is somebody who is regarded as a safe driver and he also called evidence with regard to his girlfriend who was present that evening, [witness 2]. She said that she saw the defendant endeavour to put the vehicle into first gear which is a marginal discrepancy between what she said and what the defendant said (he said second gear) but she saw him endeavour to put the vehicle in gear to make the turn, she heard the engine make a noise consistent with not being in gear and she said, as they made the turn the motor scooter ran into the rear of the vehicle she and the defendant were in.

[18] The central facts in this case are as follows: The defendant, as he acknowledges, had a duty to make sure that the way was clear before he made the turn. It is clear that [the complainant] was travelling at night on a scooter, and such vehicles are easily missed. In this case it was not missed by [witness 1] who was behind. He saw the motor scooter travelling along the left lane and it must be that Mr [Sacks] made his decision to enter and cross the lane in which he was going across to go into Green Park Road on the basis that he believed the way was clear. That was an error of judgement, there was a vehicle in the area in which he chose to cross, even if he was making the turn in the way that was less perfect than he had hoped, it was still an

error of judgement to enter into that turn with the potential for another vehicle to be there.

[19] The defendant's duty as a reasonably prudent driver was to ensure that the way was clear before he embarked on that manoeuvre. There is nothing that can be said about the conduct of the rider of the scooter that I take as factually absolving him of that duty. The rider of the scooter of course would endeavour to avoid collision, but in *Comins v Police* HC Whangarei CRI-2011-488-000013, the possibility of evasive action does not absolve a driver who crosses the lane from the duty to ensure that the way is clear.

[20] As I said the test for carelessness is universal, objective and high. The reasonably prudent driver would have ensured that the way was clear before making the turn, as a consequence of that the answer to the specific issue is, the conduct on this occasion fell below the standard of the reasonable and prudent of driver. The issue then becomes, was the carelessness, as I have found as a fact, the reason for the injury to [the complainant]. She was struck in the course of driving into the vehicle of Mr [Sacks], she fell from the motor scooter and she required hospital treatment for one fracture at the time and subsequently another fracture was discovered, those injuries were the consequence of the careless operation of the motor vehicle.

[21] Accordingly I find the charge to be proven beyond reasonable doubt.

D J Sharp  
District Court Judge